



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 25 2008

Luke F. Praxmerer, Treasurer
Kirk for Congress
P.O. Box 8
Winnetka, IL 60093

RE: MUR 5978
Kirk for Congress and Luke F. Praxmerer, in
his official capacity as treasurer

Dear Mr. Praxmerer:

On March 4, 2008, the Federal Election Commission notified Kirk for Congress and you, in your capacity as treasurer (collectively, "the Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act."). A copy of the complaint was forwarded to you at that time.

On June 26, 2008, the Supreme Court issued its decision in *FEC v. Davis*, 128 S. Ct. 2759 (2008) and found Sections 319(a) and 319(b) of the Bipartisan Campaign Reform Act of 2002 -- the so-called "Millionaires' Amendment" -- unconstitutional because they violated the First Amendment to the U.S. Constitution. Therefore, after considering the circumstances of this matter, including the complaint, information supplied by the Committee, and the *Davis* decision, the Commission voted to dismiss this matter and close the file on August 18, 2008. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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Luke F. Praxmarer, Treasurer
Kirk for Congress
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If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sidney Locke", followed by a circled mark that looks like a stylized "S" or "L".

Sidney Locke
Assistant General Counsel

Enclosure
Factual and Legal Analysis

cc: The Honorable Mark Steven Kirk
U.S. House of Representatives
1030 Longworth House Office Building
Washington, DC 20515
and
275 Whistler Road, Highland Park, IL 60035

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Kirk for Congress and Luke F. Praxmarer, **MUR: 5978**
4 in his official capacity as treasurer
5

6 **I. INTRODUCTION**
7

8 This matter was generated by a complaint filed with the Federal Election Commission
9 ("Commission") by Michael Kreloff. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that
10 Kirk for Congress and Luke F. Praxmarer, in his official capacity as treasurer ("the Committee"),
11 apparently failed to file a Form 3Z-1 with its 2008 Pre-Primary report, which was due on
12 January 24, 2008, causing the report "to be considered late and subject to a fine."

13 In accordance with the Millionaires' Amendment of the Bipartisan Campaign Finance
14 Reform Act, a candidate's principal campaign committee must file a Form 3Z-1, Consolidated
15 Report of Gross Receipts for Authorized Committees, as part of its July Quarterly and Year End
16 reports in the year preceding the general election.¹ 11 C.F.R. § 104.19; *see generally* 2 U.S.C.
17 § 441a-1. The information provided in Form 3Z-1 allows opposing candidates and the
18 Commission to compute the "gross receipts advantage," which is used to determine whether a
19 candidate running against a self-financed opponent is entitled to increased contributions limits
20 under 2 U.S.C. §§ 441a(i) or 441a-1.

21 The Committee responded by stating that the Form 3Z-1 was timely filed and referenced
22 an attached copy of the Form and a fax transmittal cover sheet dated January 24 that was
23 addressed to the Committee's assigned Reports Analysis Division ("RAD") analyst. The Form
24 and transmittal sheet were manually date-stamped by RAD as received on January 25, 2008 at

¹ Because the Illinois congressional primary was held on February 5, 2008, the Commission waived the filing of the 2007 Year End report and instead required the Pre-Primary report, due on January 24, 2008, to include activity through January 16, 2008. *See Reports Due in 2008* at page 6, available at <<http://www.fec.gov/pdf/2008reports.pdf>>; *see also* 2 U.S.C. § 434(a)(2)(A)(i).

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1 7:09 a.m., but there is no readable fax transmission line on them to indicate the exact date or time
2 the transmission was sent by the Committee.

3 As an electronic filer, the Committee was required to file the Form 3Z-1 with its 2008
4 Pre-Primary report by 11:59 p.m. on January 24, 2008. 11 C.F.R. § 104.5(e). The Committee
5 timely electronically filed its Pre-Primary report on January 24 at 9:36 p.m. as evidenced by the
6 electronic filing time-stamp. The Form 3Z-1, however, was separately faxed to the Commission
7 sometime before 9:07 a.m. on January 25, apparently due to an electronic filing software
8 problem that allowed committees to file Form 3Z-1s with only July Quarterly and Year End
9 reports.

10 The available facts support a conclusion that the Form 3Z-1 was timely filed. The
11 Committee's statement that the Form 3Z-1 was timely filed on January 24 is supported by the
12 date of the fax transmission cover sheet. In addition, based on the fact that the Committee
13 electronically filed the Pre-Primary report at 9:36 p.m. on the January 24 due date, a reasonable
14 inference may be drawn that the Committee faxed the Form 3Z-1 by the 11:59 p.m. filing
15 deadline, presumably after it was unable to file the Form electronically.

16 Nevertheless, after the complaint was filed, on June 26, 2008, the U.S. Supreme Court
17 ruled that the Millionaires' Amendment and its related reporting requirements are
18 unconstitutional. *Davis v. FEC*, 128 S. Ct. 2759 (2008). Thus, the Commission regulation at
19 issue, 11 C.F.R. § 104.19, which implements the Millionaires' Amendment reporting
20 requirements, is voided along with the underlying statutory provisions. Accordingly, we dismiss
21 the complaint and close the file in this matter.

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